

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (“Agreement”), made and entered into as of this 17th day of February, 2016, by and between **DAKOTA BROADCASTING, LLC**, a North Dakota limited liability company (“Seller”), and **RADIO WAHPETON BRECKENRIDGE, LLC**, a North Dakota limited liability company (“Buyer”).

WITNESSETH:

WHEREAS, Seller is the licensee of Station KEGK(FM), Wahpeton, North Dakota (FIN: 25533) (the “Station”); and

WHEREAS, Seller owns or leases and desires to sell and/or assign, and Buyer desires to be assigned, certain of the assets, property, and business used or useful in the operation of the Station, subject to the consent to the Federal Communications Commission (the “FCC” or “Commission”);

NOW, THEREFORE, the parties, intending to be legally bound, agree as follows:

SECTION 1 **ASSETS TO BE SOLD**

1.1 **Purchase of Assets.** Subject to the terms and conditions set forth in this Agreement, Seller hereby agrees to sell, transfer, and deliver to Buyer at Closing (as defined herein), and Buyer agrees to purchase at Closing, all of the tangible and intangible assets owned by Seller and used or held for use in connection with the operation of the Station, except for the “Excluded Assets” described in Section 1.2 hereof (the “Purchased Assets”), free and clear of all liens and encumbrances (“Liens”) other (i) liens for real property and ad valorem taxes for the year of Closing that are not yet due and payable, and (ii) any existing liens, mortgages, or other claims that will be satisfied and removed on or before the Closing Date by Seller (“Permitted Liens”), including without limitation the following:

1.1.1 **Authorizations.** All licenses, permits, and authorizations issued or granted by the Commission for the operation of the Station and all assignable applications filed with the Commission for the Station (hereinafter “FCC Licenses”) listed in **Schedule 1.1.1.**

1.1.2 **Tangible Personal Property.** All of Seller’s rights in and to the fixed and tangible property used or held for use as part of the transmission equipment for the operation of the Station, and Seller’s other tangible assets used in conjunction with the operation of the Station, set forth on **Schedule 1.1.2,** together with replacements thereof, additions, and alterations thereto, and substitutions therefor, made between the date hereof and the Closing Date, except for any retirements or dispositions thereof made between the date hereof and Closing in the ordinary course of business (all hereinafter collectively the “Tangible Personal Property”).

1.1.3 **Real Property Leases.** All contract rights and benefits under the leases and security deposits held under such leases related to the Station as listed in **Schedule 1.1.3** (the “Real Property Leases”);

1.1.4 **Contracts.** All contract rights and benefits under the contracts, leases, and security deposits held under such leases, non-governmental licenses, and other agreements related to the Station as listed in **Schedule 1.1.4** (the “Contracts”).

1.1.5 **Intangible Property.** All intangible property, including the Station’s call letters, and all copyrights, trademarks, trade names, service marks, service names, Internet names/domains/websites/pages/social media accounts, slogans, licenses, and patents listed in **Schedule 1.1.5** and other similar intangible property rights and interests (and any goodwill associated with any of the foregoing) issued to, claimed, or owned by the Seller and used in connection with the Station (the “Intangibles”).

1.1.6 **Warranties.** All warranties, representations, and guarantees made by suppliers in connection with products or services furnished to the Seller, pertaining to the Stations or affecting the Assets (the “Warranties”).

1.1.7 **Records.** All files, records, books of account, and logs relating to the Station, including electronic copies thereof, including, without limitation, the Station’s public inspection file, filings with the Commission related to the Station, invoices, statements, technical information and engineering data relating to the Station’s facilities, customer and supplier lists, and notes, research, market, design and technical data in manuals, computer software, (the “Records”).

1.2 **Excluded Assets.** Notwithstanding anything in this Agreement to the contrary, the Assets shall not include the following assets along with all rights, title, and interest therein which shall be referred to as the “Excluded Assets”:

1.2.1 Any cash, cash equivalents, or similar type investments of Seller, such as certificates of deposit, Treasury bills, and other marketable securities on hand and/or in banks;

1.2.2 Seller’s accounts receivable for services performed by Seller in connection with the operation of the Station prior to Closing (“Seller’s Accounts Receivable”);

1.2.3 Any claims, rights, and interest of Seller to any (i) refunds of taxes or fees of any nature whatsoever or (ii) deposits or utility deposits or prepaid expenses, which in each case relate solely to the period prior to the Closing Date;

1.2.4 Any fixed debt of Seller;

1.2.5 Any trade payables of Seller;

1.2.6 Any contracts of Seller not listed on **Schedule 1.1.3** or **Schedule 1.1.4** otherwise specifically assumed under this Agreement, except for ordinary course time sales

agreements for cash;

1.2.7 Seller's records or materials relating to Seller generally and not involving the Assets, including personnel records, Seller's corporate and trade names, organizational documents, and any other records not relating exclusively to the Assets;

1.2.8 Contracts of insurance, including the cash surrender value thereof, and all insurance proceeds or claims made by Seller with respect to matters arising prior to the Closing Date;

1.2.9 Any pension, profit sharing, or cash or deferred (Section 401(k)) plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any, maintained by Seller;

1.2.10 All obligations or liabilities related to Seller's employees, including without limitation contracts of employment, obligations for unused vacation time or severance fees, and any other costs and expenses relating to Seller's employees;

1.2.11 Assets shared with any of Seller's radio stations other than the Station, unless otherwise expressly provided in this Agreement or a Schedule hereto; and

1.2.12 Any rights and claims of Seller, whether mature, contingent, or otherwise, against third parties with respect to the Station and the Assets, to the extent arising during or attributable to any period prior to the Adjustment Time (as defined herein).

SECTION 2

PURCHASE PRICE

2.1 **Purchase Price.** In consideration of Seller's performance of this Agreement, the total purchase price (the "Purchase Price") to be paid by Buyer to Seller for the Station shall be as follows:

2.1.1 On or before the execution hereof, Buyer shall deliver to VISIONBank (the "Escrow Agent"), the sum of Sixty Thousand Dollars (\$60,000) to be held as an earnest money deposit, which shall be credited towards the Purchase Price at Closing (the "Deposit"), pursuant to an Escrow Agreement of even date herewith substantially in the form of **Exhibit 2.1.1**.

2.1.2 At Closing, Buyer shall pay to Seller an amount equal to Six Hundred Thousand US Dollars (\$600,000.00), less the Deposit, as adjusted pursuant to Section 3 below, in immediately available funds via wire transfer, in accordance with instructions delivered by Seller to Buyer no later than two (2) business days prior to the Closing Date.

2.2 **Allocation of Purchase Price.** On or before the Closing Date, Buyer and Seller shall mutually agree upon an allocation of the Purchase Price among the Assets that complies with Section 1060 of the Internal Revenue Code of 1986, as amended (the "Code"). The

allocation shall be binding on the parties and used for all tax filings and other related purposes. In the event that Buyer and Seller shall be unable to mutually agree upon the allocation by Closing, Buyer and Seller shall together select an independent certified public accountant (the “Arbitrating Firm”) within ten (10) days after the Closing who shall make a determination of the allocation within sixty (60) days after his or her selection. Buyer and Seller agree that the allocation determined by the Arbitrating Firm shall be conclusive and binding on Buyer and Seller for all purposes, including without limitation, reporting and disclosure requirements of the Internal Revenue Service.

SECTION 3 **ADJUSTMENTS**

3.1 **Adjustment Time.** The “Adjustment Time” as used herein shall be 12:01 A.M. current local time in Wahpeton, North Dakota on the Closing Date. Risk of loss of the Assets shall remain with Seller until the Adjustment Time, and after such time shall be borne by Buyer.

3.2 **Prorations.** All prepaid and deferred income and expenses relating to the Assets and arising from the operation of the Station shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles as of the Adjustment Time, and the Purchase Price shall be increased or decreased accordingly. Such prorations shall include, without limitation, FCC regulatory fees.

3.3 **Adjustments After Closing Date.** If the amount of any prorations cannot be readily ascertained or agreed upon on the Closing Date, proration of such items shall be determined within sixty (60) days after the Closing Date and payment therefor shall be made to the party entitled thereto within five (5) business days after notice of such determination thereof has been given to Buyer or Seller, as the case may be. In the event of any disputes between the parties as to adjustments, the amounts not in dispute shall nonetheless be paid at the time provided in this Section and such disputes shall be determined by an independent certified public accountant mutually acceptable to the parties. The accountant’s resolution of the dispute shall be final and binding on the parties, and a judgment may be entered thereon in any court of competent jurisdiction. The fees and expenses of such accountant shall be paid one-half by Seller and one-half by Buyer.

SECTION 4 **APPLICATION TO AND CONSENT BY COMMISSION**

4.1 **Commission Consent.** Without limiting any other conditions of Closing specified herein, Buyer and Seller acknowledge that consummation of the purchase and sale provided for herein and the performance of the obligations of Seller and Buyer under this Agreement is subject to the Commission’s consent to the assignment of the FCC Licenses from Seller to Buyer.

4.2 **Application for Commission Consent.**

4.2.1 Seller and Buyer agree to proceed expeditiously and with due diligence

and in good faith to use their commercially reasonable efforts and to cooperate with each other in seeking the Commission's approval of the transactions contemplated hereunder. Within five (5) business days after the date of this Agreement, each party shall have prepared its portion of an application (FCC Form 314) to request Commission consent to assign the FCC Licenses from Seller to Buyer (the "Assignment Application") and shall have cooperated to ensure the filing of the Assignment Application with the Commission within such five business day period. Each party further agrees to diligently prosecute the Assignment Application and expeditiously prepare Assignment Application amendments, respond to oral or written inquiries, and answer pleadings whenever such are required by the Commission or its rules.

4.2.2 All filing fees imposed by the Commission with respect to the Assignment Application shall be paid one-half by Seller and one-half by Buyer.

4.2.3 Buyer and Seller shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation and prosecution of any governmental filing hereunder.

4.2.4 Each party agrees to comply with any reasonable condition imposed on it by the Commission, except that no party shall be required to comply with a condition that would have a material adverse effect upon it (except for conditions of general applicability) unless the condition was imposed as the result of a circumstance which constitutes a breach by that party of any of its representations, warranties, or covenants in this Agreement. Buyer and Seller shall oppose any efforts for reconsideration or judicial review of the grant by the Commission of the Assignment Application (but nothing in this Section will limit any party's right to terminate this Agreement in accordance with the terms herewith).

SECTION 5

ASSUMPTIONS

5.1 **Liabilities.** The Assets shall be sold and conveyed to Buyer free and clear of all Liens of any type or amount created or suffered by Seller prior to the Closing Date, whether existing now or in the future, except for (i) Permitted Liens, and (ii) liabilities being assumed under the Assets acquired by Buyer hereunder which arise after the Adjustment Time (the "Assumed Obligations").

5.2 **Buyer's Assumed Obligations.** Buyer covenants and agrees to assume at Closing and discharge following the Closing all of the unperformed duties of Seller accruing after the Closing Date under the Assumed Obligations. Buyer shall assume such unperformed duties of Seller only to the extent that such duties accrue on or after Closing based on the operation of the Station after the Closing Date. Except as specifically assumed by Buyer in this Agreement, Buyer is not agreeing to, and shall not, assume any other liability, obligation, undertaking, expense, or agreement of Seller of any kind, absolute or contingent, known or unknown, and the execution and performance of this Agreement shall not render Buyer liable for any such liability, obligation, undertaking, expense, or agreement.

5.3 **Seller's Liability.** Seller shall remain liable for all obligations, liabilities, claims and expenses of any nature arising out of or related to (a) the conduct of Seller's business or operation of the Station prior to the Adjustment Time; or (b) the Excluded Assets.

SECTION 6

REPRESENTATIONS, WARRANTIES, AND COVENANTS OF SELLER

Seller covenants, represents, and warrants as follows:

6.1 Organization and Standing.

6.1.1 Seller is a limited liability company organized and in good standing under the laws of the State of North Dakota, and has the full power to own the Assets and to carry on the business of the Station as it is now being conducted.

6.1.2 Seller has the full power and authority to enter into this Agreement and to execute all of Seller's Closing Documents (as defined below) that require Seller's signatures.

6.2 **Binding Effect of Agreement.** This Agreement constitutes a valid and binding obligation of Seller enforceable against Seller in accordance with the terms of this Agreement, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization, or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) (collectively, "Enforceability Exceptions"). Upon execution, the Seller's Closing Documents will constitute valid and binding obligations of Seller enforceable against Seller in accordance with their terms except for the Enforceability Exceptions. The execution, delivery, and performance of this Agreement or any of Seller's Closing Documents do not violate any provisions of Seller's Articles of Organization or Operating Agreement, or any contract provision or other commitment to which Seller or the Station are a party or under which they or their property is bound, or any judgment or order of which Seller has received notice, and will not result in the creation or imposition of any lien, charge, security interest, or encumbrance of any nature whatsoever upon any of the Assets except for Permitted Liens.

6.3 **Authorizations.** Seller is the authorized legal holder of the FCC Licenses for the operation of the Station, which are not subject to any restrictions or conditions which limit in any respect the operation of the Station as now operated except as may be set forth on the face of such authorizations and except for those of general applicability. Each of the FCC Licenses is a validly existing authorization for the operation of the facilities described therein. There is no action pending or to Seller's knowledge threatened before the Commission or other body to revoke, refuse to renew, suspend, or materially adversely modify the FCC Licenses or, to Seller's knowledge, any action which may result in the issuance of any cease and desist orders or the imposition of any administrative sanctions whatsoever with respect to the Station or its operation.

6.4 **Taxes.** Seller has filed all federal, state, county and local income, excise, property, sales, use, franchise and other tax returns and reports which are required to have been filed by it under applicable law in connection with the Station's business, and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments which have become payable.

6.5 **Personal Property.** Schedule 1.1.2 contains a list of all material items of Tangible Personal Property included in the Assets. Seller has good and marketable title to, or a valid leasehold interest in, each item of Tangible Personal Property, free and clear of all Liens, except Permitted Liens. The Tangible Personal Property is sold AS IS, WHERE IS. SELLER MAKES NO WARRANTY OF MERCHANTABILITY, MARKETABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY WHATSOEVER AS TO THE CONDITION OF THE TANGIBLE PERSONAL PROPERTY.

6.6 **Leased Real Property.** Schedule 1.1.3 contains a description and true and correct copies of the Real Property Leases relating to the Station under which Seller is lessee or licensee of, or holds, uses or operates, any leased real property which Buyer is agreeing to acquire and assume hereunder (the "Real Property Leases").

6.7 **Contracts.** Schedule 1.1.4 contains a list of all contracts used in the operation of the Station (other than ordinary course time sales agreements for cash). Each of the Contracts is in effect and is binding upon Seller and, to Seller's knowledge, the other parties thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally). Seller has performed its obligations under each of the Contracts in all material respects, and is not in material default thereunder, and to Seller's knowledge, no other party to any of the Contracts is in default thereunder in any material respect. Seller has delivered to Buyer, or within five (5) business days of the date hereof, true and complete copies of each Contract, together with all amendments thereto.

6.8 **Intangibles.** Schedule 1.1.5 contains a complete list of the copyrights, trademarks, trade names, service marks, service names, Internet names/domains/websites/pages/social media accounts, licenses, patents, logos, jingles, and slogans used in the operation of the Station. Seller owns or will otherwise have the lawful right, subject to the limitations of federal law and internet domain name registration rights, to perpetually use, free and clear of any Liens, except Permitted Liens, all such intellectual property identified in Schedule 1.1.5. To Seller's knowledge, the Station is not being operated in a manner that infringes upon any intellectual property of any third party or otherwise violates the intellectual rights of any third party, and no claim has been made or threatened against Seller or any other party alleging any such infringement or other violation. To Seller's knowledge, there has been no infringement or other violation by others of any intellectual property used in the operation of the Station.

6.9 **Litigation.** Except for proceedings affecting segments of the broadcasting industry in general, there is no complaint, claim, litigation, or judicial, administrative, or other proceeding of any nature, including, without limitation, a grievance, arbitration, or insolvency or bankruptcy proceeding pending, or to Seller's knowledge, threatened (or any investigation threatened to Seller's knowledge) against the Station, Seller, or any of the Assets being sold or transferred to Buyer, which may (a) materially adversely affect the Assets or the FCC Licenses

to be assigned hereunder, or the operation of the Station in substantially the same manner as it is currently operated, or would subject Buyer to liability; (b) restrain or enjoin the Closing or the consummation of the transactions contemplated hereby; or (c) result in the revocation, material adverse modification, or suspension of the FCC Licenses, or the issuance or imposition of any administrative sanction that would materially adversely affect the Assets or the FCC Licenses, or the operation of the Station or subject Buyer to liability. Seller will give Buyer prompt notice of its discovery of any such basis or the institution or the threat of any such litigation, investigation, or proceeding. Seller is not in default in respect to any judgment, order, writ, injunction, decree, rule, or regulation of any applicable court or governmental body, which default could have a materially adverse effect on the Assets or the Station.

6.10 **Absence of Insolvency.** No insolvency proceedings of any character including without limitation, bankruptcy, receivership, reorganization, composition, or arrangements with creditors, voluntary or involuntary, affecting the Seller or any of the Station Assets, are pending or, to the knowledge of Seller, threatened, and Seller has made no assignment for the benefit of creditors, nor taken any action with a view to, or which would constitute the basis for the institution of, any such insolvency proceedings.

6.11 **Broker.** Payment of any broker engaged by or claiming a right of payment through the actions of Seller, including but not limited to Jody McCoy, III of Strategic Tower Advisors, shall be Seller's sole cost and expense.

6.12 **No Untrue Statements or Omission.** No representation or warranty made by Seller in this Agreement or any Schedule, exhibit, statement, certificate, or other document heretofore or hereafter furnished by Seller, or on its behalf, to Buyer and pursuant to this Agreement or in connection with the transactions contemplated hereby contains or will contain any knowingly untrue statement or knowingly omits to state a material fact necessary to make the statements contained therein not misleading. All representations and warranties of Seller set forth in this Agreement shall be true, complete and accurate in all material respects as of the Closing Date as if made on that date.

SECTION 7

REPRESENTATIONS, WARRANTIES, AND COVENANTS OF BUYER

Buyer covenants, represents, and warrants as follows:

7.1 **Organization and Standing.** Buyer is a limited liability company organized and in good standing under the laws of the State of North Dakota.

7.2 **Authorization and Binding Obligation.** Buyer has all necessary power and authority to enter into this Agreement and all of Buyer's Closing Documents (as defined below) that require Buyer's signature. The execution, delivery, and performance of this Agreement (as of the date of execution of this Agreement and on the Closing Date) and the Buyer's Closing Documents (on the Closing Date) are or will be authorized by all necessary actions of Buyer. This Agreement constitutes a valid and binding obligation of Buyer enforceable against Buyer in accordance with the terms of this Agreement, except as such enforceability may be limited by the

Enforceability Exceptions. Upon execution, the Buyer's Closing Documents will constitute valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms except for the Enforceability Exceptions.

7.3 **No Contravention.** The execution, delivery, and performance of this Agreement or any of Buyer's Closing Documents do not violate any contract provision or other commitment to which Buyer is a party or under which it or its property is bound, or any judgment or order except as contemplated herein.

7.4 **Litigation.** Except for administrative rule making or other proceedings of general applicability to the broadcast industry, there is no litigation, proceeding, judgment, claim, action, investigation, or complaint threatened against or affecting it which would affect Buyer's authority or ability to carry out this Agreement.

7.5 **Buyer's Qualifications.** Buyer is legally, financially, and otherwise qualified to be the licensee of, acquire, own and operate the Station under the Communications Act and the rules, regulations, and policies of the Commission. There are no facts that would, under existing law and the existing rules, regulations, policies, and procedures of the Commission, disqualify Buyer as an assignee of the FCC Licenses or as the owner and operator of the Station. No waiver of or exemption from any Commission rule or policy is necessary for the Commission's consent to the Assignment Application to be obtained. There are no matters which might reasonably be expected to result in the Commission's denial or delay of approval of the Assignment Application. Buyer has the financial ability to pay the Purchase Price and to operate the Station without additional revenue for three (3) months following Closing.

7.6 **Bankruptcy.** No (i) voluntary or, to Buyer's knowledge, involuntary petition in bankruptcy, receivership, insolvency, (ii) reorganization with respect to Buyer, or (iii) petition to appoint a receiver or trustee of Buyer's property has, to Buyer's knowledge, been filed against Buyer. Buyer has not made any assignment for the benefit of its creditors, and has not permitted any judgment, execution, attachment, or levy against it or against any of its properties to remain outstanding or unsatisfied for more than thirty (30) days.

7.7 **Broker.** Payment of any broker engaged, by or claiming a right of payment through the actions of, Buyer shall be Buyer's sole cost and expense.

7.8 **No Untrue Statements or Omission.** No representation or warranty made by Buyer in this Agreement or any Schedule, exhibit, statement, certificate, or other document heretofore or hereafter furnished to Seller and pursuant to this Agreement or in connection with the transaction contemplated hereby contains or will contain any knowingly untrue statement or knowingly omits to state a material fact necessary to make the statement contained therein not misleading. All representations and warranties of Buyer set forth in this Agreement shall be true, complete and accurate in all material respects as of the Closing Date as if made on that date.

SECTION 8
SELLER'S AND BUYER'S CONDUCT OF BUSINESS PRIOR
TO CLOSING AND BUYER'S ACCESS TO INFORMATION

8.1 **Affirmative Covenants of Seller.** From the date of this Agreement until the Closing Date, Seller shall have complete control and supervision of and sole responsibility for the Station and its operation, and during such period Seller shall operate the Station in accordance in all material respects with the rules and regulations of the Commission and the FCC Licenses and file all material Commission ownership reports and other documents required to be filed with the Commission during such period and maintain copies of the Station's required Commission filings in the ordinary course of business.

8.2 **Negative Covenants of Seller.** Between the date hereof and the Closing Date, Seller shall not, with respect to the Assets, the Station, or the operation thereof, without the consent of Buyer, which consent shall not be unreasonably withheld:

8.2.1 By any act or omission surrender, modify materially adversely, forfeit, or fail to renew under regular terms the FCC Licenses, or give the Commission grounds to institute any proceeding for the revocation, suspension, or material adverse modification of any such FCC Licenses, or fail to prosecute with due diligence any pending applications with respect to such FCC Licenses. Seller shall not take any action, or fail to take any action, where such action or inaction would delay the grant of the Assignment Application by the Commission.

8.2.2 Create or suffer or permit the creation of any Lien on any of the Assets except for Permitted Liens.

8.3 **Restrictions on Buyer.** Buyer shall not have any right to control the programming or operations of the Station prior to the Closing Date and Seller shall have complete control of the programming and operation of the Station between the date hereof and the Closing Date and shall operate the Station in conformity in all material respects with the requirements of law and this Agreement.

8.4 **Seller Additional Covenants.** Seller shall give detailed written notice to Buyer promptly upon learning of the occurrence of any event that would cause or constitute a breach, or that would have caused a breach had such event occurred or been known to Seller prior to the date hereof, of any of the representations or warranties contained in this Agreement. Seller shall use commercially reasonable efforts to cure any such event. Updates provided in order to comply with the covenant in this Section 8.4 will not have any impact on Buyer's Conditions to Closing or serve to limit Buyer's right to indemnification hereunder. Seller shall use commercially reasonable efforts to obtain required consents of third parties to any Contract on Schedules 1.1.3 and 1.1.4, which requires such consent to assignment. Commercially reasonable efforts shall include payment of any past due amounts, if necessary to secure said consent.

8.5 **Buyer's Covenants.** From the date of this Agreement until the Closing Date, Buyer covenants that it will take no action, or fail to take any action, where such action or inaction would disqualify it from becoming the licensee of the Station or delay the grant of the

Assignment Application by the Commission. Furthermore, Buyer shall give detailed written notice to Seller promptly upon learning of the occurrence of any event that would cause or constitute a breach, or that would have caused a breach had such event occurred or been known to Buyer prior to the date hereof, of any of the representations or warranties contained in this Agreement. Buyer shall use commercially reasonable efforts to cure any such event. Updates provided in order to comply with the covenant in this Section 8.5 will not have any impact on Seller's Conditions to Closing or serve to limit Seller's right to indemnification hereunder.

SECTION 9

CONDITIONS FOR CLOSING

9.1 Closing.

9.1.1 The Closing of the transaction contemplated by this Agreement (the "Closing") shall take place at a mutually agreed upon date within ten (10) business days after the date on which the Commission staff's grant of the Assignment Application (the "FCC Consent") becomes a Final Order; provided that in no event shall Closing occur prior to May 1, 2016. Notwithstanding the foregoing, in no event shall the parties be obligated to proceed to Closing if its respective conditions precedent to Closing set forth in Sections 9.2 and 9.3, as the case may be, have not been satisfied or waived. For purposes of this Agreement, the term "Final Order" shall mean an order of the Commission (including action duly taken by the Commission's staff, pursuant to delegated authority) which is not reversed, stayed, enjoined, or set aside, and with respect to which no timely request for stay, reconsideration, review, rehearing, or notice of appeal or determination to reconsider or review is pending, and as to which the time for filing any such request, petition, or notice of appeal or for review by the Commission, and for any reconsideration, stay, or setting aside by the Commission on its own motion or initiative, has expired. The Closing shall be accomplished on the Closing Date by exchanging the closing documents required by this Agreement and such other closing documents as the parties may reasonably require in person, by mail, by email, or air courier and by Buyer's delivery of the balance Purchase Price by wire transfer of immediately available funds.

9.2 **Conditions Precedent to Obligations of Buyer.** The obligation of the Buyer to consummate the Closing under this Agreement is subject to the satisfaction of each of the following express conditions precedent (provided that Buyer may, at its election, waive any of such conditions on or before the Closing Date, notwithstanding that such condition is not fulfilled) on the Closing Date:

9.2.1 Seller shall have delivered to Buyer the Seller's Closing Documents as described in Section 10.1 below.

9.2.2 Seller's representations and warranties contained in this Agreement shall each be true and correct in all material respects at and as of the Closing Date with the same force and effect as if each such representation or warranty was made at and as of such time, except in respect of such changes as are contemplated or permitted by this Agreement.

9.2.3 Seller shall have performed and complied in all material respects with all covenants, agreements, and obligations required by this Agreement to be performed or complied with by it prior to the Closing Date.

9.2.4 Seller shall be the holder of the FCC Licenses.

9.2.5 The Commission shall have granted its consent to the Assignment Application for which Closing is occurring and such consent shall have become a Final Order.

9.2.6 Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

9.3 **Conditions Precedent to Obligations of Seller.** The obligation of the Seller to consummate the Closing under this Agreement is subject to the satisfaction of each of the following express conditions precedent (provided that Seller may, at its election, waive any of such conditions on or before the Closing Date, notwithstanding that such condition is not fulfilled) on the Closing Date:

9.3.1 Buyer shall have delivered to Seller the Buyer's Closing Documents as described in Section 10.2 below.

9.3.2 Each of Buyer's representations and warranties contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as if each such representation or warranty was made at and as of such time, except in respect of such changes as are contemplated or permitted by this Agreement.

9.3.3 Buyer shall have performed and complied in all material respects with all covenants, agreements and obligations required by this Agreement to be performed or complied with by it prior to the Closing Date.

9.3.4 The Commission shall have granted its consent to the Assignment Application for which Closing is occurring.

9.3.5 Buyer shall have delivered to Seller the Purchase Price as described in Section 2.1.

9.3.6 Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

9.3.7 Prior to or concurrently with the Closing hereunder, Seller shall have consummated the assignment of the licenses for and assets of radio stations KQLX(AM) and KQLX-FM, Lisbon, North Dakota, as contemplated by that certain Asset Purchase Agreement between Seller and i3G Radio, LLC.

SECTION 10
OBLIGATIONS AT CLOSING

10.1 **Closing Documents to be Delivered by Seller.** At each Closing, Seller shall deliver to Buyer the following (“Seller’s Closing Documents”):

10.1.1 An executed Bill of Sale transferring to Buyer all Tangible Personal Property to be transferred hereunder.

10.1.2 An executed Assignment/Assumption Agreement assigning to Buyer the Assumed Obligations.

10.1.3 An executed Assignment and Assumption of Sublease substantially in the form of **Exhibit 10.1.3** (the “Sublease Assignment”), assigning to Buyer the Real Property Leases.

10.1.4 An executed Assignment of Licenses assigning the FCC Licenses to Buyer.

10.1.5 A certificate executed by Seller stating that the conditions set forth in Sections 9.2.2 and 9.2.3 have been satisfied.

10.1.6 A good standing certificate issued by the Secretary of State of Seller’s jurisdiction of formation.

10.1.7 A certificate executed by Seller certifying the due authorization of this Agreement, together with copies of Seller’s authorizing resolutions.

10.1.8 Joint Instructions to the Escrow Agent executed by Seller.

10.1.9 Any other instruments of conveyance, assignment, and transfer that may be reasonably necessary to convey, transfer, and assign the Assets from Seller to Buyer, free and clear of Liens, except for Permitted Liens.

10.2 **Closing Documents to be Delivered by Buyer.** At each Closing, in addition to the Purchase Price, Buyer shall deliver to Seller the following (“Buyer’s Closing Documents”):

10.2.1 A certificate executed by Buyer stating that the conditions set forth in Sections 9.3.2 and 9.3.3 have been satisfied.

10.2.2 An Assignment/Assumption Agreement executed by Buyer assuming the Assumed Obligations.

10.2.3 The Sublease Assignment executed by Buyer assuming the Real Property Leases.

10.2.4 A good standing certificate issued by the Secretary of State of Buyer's jurisdiction of formation.

10.2.5 Joint Instructions to the Escrow Agent executed by Buyer.

10.2.6 The balance of the Purchase Price.

10.2.7 Such other documents and instruments of assumption that may be necessary to assume the Assumed Obligations.

SECTION 11

INDEMNIFICATIONS

11.1 **Breach of Seller's Agreements, Representations, and Warranties.** Subject to the limitations set forth herein, Seller shall indemnify and hold harmless Buyer from and against, any loss, damage, liability, obligation, deficiency, claim, suit, cause of action, demand, judgment, or expense (including without limitation, payments, fines, penalties, interest, taxes, assessments, and reasonable attorneys' fees and accounting fees), contingent or otherwise, whether incurred or asserted prior to or after the Closing Date, arising out of or sustained by reason of:

(a) any breach of any warranty or representation of Seller contained in this Agreement or in any certificate or other instrument furnished to Buyer pursuant to this Agreement or in connection with any of the transactions contemplated hereby;

(b) any default under any agreement of Seller included in this Agreement or in any certificate or other instrument furnished to Buyer pursuant to this Agreement or in connection with any of the transactions contemplated hereby;

(c) the operation of the Station or the ownership of the Assets prior to Closing (including, but not limited to, any and all claims, liabilities, and obligations arising or required to be performed by Seller under any lease, contract, or agreement prior to Closing);

(d) except for the Assumed Obligations, any transaction entered into by Seller or arising in connection with the Station or the operation of the business thereof or any of the Assets prior to the Closing or during the period of operation contemplated in Section 9.1; or

(e) arising out of or related to the Excluded Assets.

11.2 **Breach of Buyer's Agreements, Representations and Warranties.** Buyer shall indemnify and hold harmless Seller from and against, any loss, damage, liability, obligation, deficiency, claim, suit, cause of action, demand, judgment, or expense (including without limitation, payments, fines, penalties, interest, taxes, assessments, and reasonable attorneys' fees and accounting fees), contingent or otherwise, whether incurred or asserted prior to or after the Closing Date, arising out of or sustained by reason of:

(a) any breach of any warranty or representation of Buyer contained in this Agreement or in any certificate or other instrument furnished to Seller pursuant to this Agreement or in connection with any of the transactions contemplated hereby;

(b) any default under any agreement of Buyer included in this Agreement or in any certificate or other instrument furnished to Seller pursuant to this Agreement or in connection with any of the transactions contemplated hereby;

(c) the operation of the Station or the ownership of the Assets subsequent to Closing, except for such operation as permitted in Section 9.1;

(d) any transaction entered into by Buyer or arising in connection with the Station or the operation of the business thereof or any of the Assets subsequent to the Closing; or

(e) the Assumed Obligations.

11.3 **Procedures.**

(a) The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by third parties that is subject to indemnification hereunder (a "Claim") arising or asserted within the time period specified in Section 15.1 hereof, but a failure to give such notice or delaying such notice shall not affect the indemnified party's rights or the indemnifying party's obligations except to the extent the indemnifying party's ability to remedy, contest, defend, or settle with respect to such Claim is thereby prejudiced.

(b) The indemnifying party shall have the right to undertake the defense or opposition to such Claim with counsel selected by it. In the event that the indemnifying party does not undertake such defense or opposition in a timely manner, the indemnified party may undertake the defense, opposition, compromise, or settlement of such Claim with counsel selected by it at the indemnifying party's cost (subject to the right of the indemnifying party to assume defense of or opposition to such Claim at any time prior to settlement, compromise or final determination thereof), *provided, however*, that no settlement may be entered into by the indemnified party without the mutual consent of the indemnifying party.

(c) Anything herein to the contrary notwithstanding: (i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise, or settlement of the Claim; (ii) the indemnifying party shall not, without the indemnified party's written consent, settle or compromise any Claim or consent to entry of any judgment which does not include the giving by the claimant to the indemnified party of a release from all liability in respect of such Claim; (iii) in the event that the indemnifying party undertakes defense of or opposition to any Claim, the indemnified party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel concerning such Claim and the indemnifying party and the indemnified party and their respective counsel shall cooperate in good faith with respect to such Claim; and (iv) neither party shall have any liability to the other under any circumstances

for special, indirect, consequential, punitive, or exemplary damages or lost profits or similar damages of any kind, whether or not foreseeable.

11.4 **Sole Remedy.** Except as provided to the contrary in this Agreement, the right to indemnification pursuant to this Section 11 shall be the sole and exclusive remedy of each party following the Closing in connection with any breach or other violation by the other party of its representations and warranties contained in this Agreement.

SECTION 12

FEES AND EXPENSES

Buyer and Seller shall split equally any Commission filing fees associated with filing of the Assignment Application. All other expenses incurred in connection with this transaction shall be borne by the party incurring same, except that Buyer shall be solely responsible for all governmental taxes, fees and charges applicable to the transfer of the Assets under this Agreement; provided that Buyer shall not be liable for any taxes or levies based upon Seller's income (including without limitation the Purchase Price and/or income derived from the operation contemplated by Section 9.1).

SECTION 13

BULK SALES LAW

The parties do not believe that any bulk sales or fraudulent conveyance statute applies to the transactions contemplated by this Agreement. Buyer therefore waives compliance by Seller with the requirements of any such statutes, and Seller agrees to indemnify and hold Buyer harmless against any claim made against Buyer by any creditor of Seller as a result of a failure to comply with any such statute.

SECTION 14

DEFAULT AND TERMINATION

14.1 **Termination.** This Agreement may be terminated prior to the Closing by either Buyer or Seller as the case may be, if the party seeking to terminate is not in material default or breach of this Agreement, upon written notice to the other promptly upon the occurrence of any of the following:

(a) by written notice of Buyer to Seller if Seller breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period (as defined below);

(b) by written notice of Seller to Buyer if Buyer breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period; *provided, however*, that the Cure Period shall not apply to Buyer's obligations to timely pay the Purchase Price at Closing;

(c) by Seller or Buyer if the Commission denies the Assignment Application or designates it for a trial-type hearing; or

(d) by either party by written notice if by twelve (12) months from the date of execution of this Agreement the Closing has not been consummated by the parties to this Agreement.

14.2 A party shall be in “default” under this Agreement if it makes any material misrepresentation to the other party in connection with this Agreement, or materially breaches or fails to perform any of its representations, warranties, or covenants contained in this Agreement. Non-material breaches or failures shall not be grounds for declaring a party to be in default, postponing the Closing, or terminating this Agreement. If either party believes the other to be in default hereunder, the former party shall provide the other with written notice specifying in reasonable detail the nature of such default. The term “Cure Period” as used herein means a period commencing on the date Buyer or Seller receives from the other written notice of breach or default hereunder and continuing until the earlier of (i) fifteen (15) calendar days thereafter or (ii) the Closing Date determined under Section 9.1; *provided, however*, that if the breach or default is non-monetary and cannot reasonably be cured within such period but can be cured before the Closing Date determined under Section 9.1, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the Closing Date determined under Section 9.1. Notwithstanding the foregoing, in the event of monetary default, time shall be of the essence, no notice shall be required or cure period afforded, and this Agreement may be terminated immediately.

14.3 Seller agrees that the Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, in the event of failure or threatened failure by Seller to comply with the terms of this Agreement, Buyer shall have the right to elect to specifically to enforce Seller’s performance under this Agreement, subject to obtaining any necessary Commission consent, and Seller agrees to waive the defense in any such suit that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy.

14.4 If Seller terminates this Agreement pursuant to Section 14.1(b), Seller will be entitled to retain the Deposit, and such amount shall constitute liquidated damages and the sole remedy of Seller under this Agreement. Buyer acknowledges and agrees that Seller’s recovery of such amount shall constitute payment of liquidated damages and not a penalty and that Seller’s liquidated damages amount is reasonable in light of the substantial but indeterminate harm anticipated to be caused by Buyer’s material breach of, default under or failure to consummate this Agreement, the difficulty of proof of loss and damages, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transactions to be consummated hereunder.

14.5 Except as provided by Section 14.4, the termination of this Agreement shall not relieve any party of any liability for breach or default under this Agreement prior to the date of termination.

SECTION 15
SURVIVAL OF WARRANTIES

15.1 All representations and warranties made in this Agreement shall survive the Closing for a period of one year, at which time they shall expire and be of no further force or effect. Any claim to indemnification in respect of a covenant or agreement shall be made within eighteen months of the Closing Date. In either case, if within such applicable period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations.

15.2 Except as set forth in this Agreement, neither the acceptance nor the delivery of property hereunder shall constitute a waiver of any covenant, representation, warranty, agreement, obligation, undertaking, or indemnification of Seller or Buyer contained in this Agreement, all of which shall, unless otherwise specifically provided, survive the Closing hereunder in accordance with the terms of this Agreement and shall be binding upon and inure to the benefit of all of the parties hereto, their heirs, legal representatives, successors, and assigns.

SECTION 16
NOTICES

16.1 Any notice, demand, or request required or permitted to be given under the provisions of the Agreement shall be in writing and shall be deemed to have been duly delivered on the date of personal delivery, on the date of email transmission or confirmed delivery by a nationally recognized overnight courier service, or on the date of receipt if mailed by registered or certified mail, postage prepaid and return receipt requested, and shall be deemed to have been received if sent to the following addresses:

If to Seller:

Dakota Broadcasting, LLC
Attn: Michael J. Hofer
3223 32nd Ave S
Suite 201
Fargo, ND 58103

With copy (which shall not constitute notice) to:

Marissa G. Repp, Esq.
Repp Law Firm
1629 K Street, NW
Suite 300
Washington, DC 20006-1631
marissa@repplawfirm.com

If to Buyer:

Radio Wahpeton Breckenridge, LLC
Attn: Brooke Ingstad
PO Box 9439
Fargo, ND 58106

With copy (which shall not constitute notice) to:

Dawn Sciarrino, Esq.
Sciarrino & Shubert, PLLC
5425 Tree Line Dr.
Centreville, VA 20120
dawn@sciarrinolaw.com

Any party may change its address for notices by written notice to the other given pursuant to this Section. Any notice purportedly given by a means other than as provided in this Section shall be invalid and shall have no force or effect.

SECTION 17 **MISCELLANEOUS**

17.1 **Headings.** The headings of the Sections of this Agreement are for convenience of reference only, and do not form a part thereof, and do not in any way modify, interpret, or construe the meaning of the sections themselves or the intentions of the parties.

17.2 **Entire Agreement.** This Agreement (including the Schedules hereto) sets forth the entire agreement of the parties with respect to the subject matter hereof and is intended to supersede all prior negotiations, understandings, and agreements and cannot be altered, amended, changed, or modified in any respect unless each such alteration, amendment, change, or modification shall have been agreed to by each of the parties hereto and reduced to writing in its entirety and signed and delivered by each party. No provision, condition, or covenant of this Agreement shall be waived by either party hereto except by a written instrument delivered to the other party and signed by the party consenting to and to be charged with such waiver. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement.

17.3 **Binding Effect and Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns. Buyer may freely assign this Agreement to any entity in which Buyer owns a majority of the equity or which is otherwise substantially controlled by Buyer, upon notice to Seller, provided, that (i) any such assignment does not unduly delay processing and grant of the Assignment Application or delay Closing, and (ii) any such assignee delivers to Seller a written assumption of this Agreement. Except for the foregoing, neither party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve any party of any obligation or liability under this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to

give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

17.4 **Additional Documents.** The parties hereto agree to execute, acknowledge, and deliver, at or after the Closing Date, such other and further instruments and documents as may be reasonably necessary to implement, consummate, and effectuate the terms of this Agreement, the effective vesting in Buyer of title to the Assets.

17.5 **Governing Law and Jurisdiction.** This Agreement shall be construed in accordance with the laws of the State of North Dakota without regard to conflict of law provisions and the obligations of the parties hereto are subject to all federal, state, and local laws and regulations now or hereafter in force and to the rules, regulations, and policies of the Commission and all other government entities or authorities presently or hereafter to be constituted. Any action to enforce this Agreement shall be brought in the state or federal courts in the State of North Dakota.

17.6 **Interpretation.** This Agreement shall be construed fairly in accordance with its terms. Each party has been given an opportunity to consult with independent counsel in connection with the negotiation and preparation of this Agreement and, consequently, each party hereby waives the application of any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the party whose counsel drafted that provision.

17.8 **Severability.** If any term or provision of this Agreement or its application shall, to any extent, be declared to be invalid or unenforceable, so long as no party is deprived of the benefits of this Agreement in any material respect, the remaining terms and provisions shall not be affected and shall remain in full force and effect and to such extent are severable.

17.9 **Publicity.** Seller and Buyer agree that, except as may be required by applicable law, all public announcements relating to this Agreement or the transactions contemplated hereby will be made only as may be agreed upon in writing by the parties, which consent shall not be unreasonably withheld.

17.10 **Confidentiality.** Buyer and Seller, and their respective employees, agents, and representatives, shall each keep confidential all non-public information obtained with respect to the other in connection with the negotiation and performance of this Agreement, except where such information is known or available through other lawful sources or where its disclosure is required in accordance with applicable law. If the transactions contemplated hereby are not consummated for any reason, Buyer and Seller, and their respective employees, agents, and representatives, shall return to the other, without retaining a copy thereof, any written information, including all financial information, obtained from the other in connection with this Agreement and the transactions contemplated hereby, and shall forever preserve the confidentiality of such information. The parties recognize that a breach of this covenant of confidentiality may cause substantial, irreparable harm to the other's business and therefore agree that injunctive relief would be appropriate to enforce any breach of this covenant.

17.11 **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Counterpart signatures to this Agreement and all documents executed in connection herewith may be delivered electronically, and such electronic copies shall be deemed originals.

[Signature Page Follows.]

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and executed by their proper individuals or officers thereunto duly authorized as of the day and year first above written.

SELLER:

DAKOTA BROADCASTING, LLC

By: _____



Michael J. Hofer
Chief Manager and President

BUYER:

**RADIO WAHPETON
BRECKENRIDGE, LLC**

Brooke Ingstad
President

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and executed by their proper individuals or officers thereunto duly authorized as of the day and year first above written.

SELLER:

DAKOTA BROADCASTING, LLC

By: _____

Michael J. Hofer
Chief Manager and President

BUYER:

**RADIO WAHPETON
BRECKENRIDGE, LLC**

 _____

Brooke Ingstad
President

LIST OF SCHEDULES AND EXHIBITS

Schedule 1.1.1	FCC Licenses
Schedule 1.1.2	Tangible Personal Property
Schedule 1.1.3	Real Property
Schedule 1.1.4	Contracts
Schedule 1.1.5	Intangibles
Exhibit 2.1.1	Form of Escrow Agreement
Exhibit 10.1.3	Form of Assignment and Assumption of Sublease